

SENATE BILL NO. 293

INTRODUCED BY S. DOHERTY, GALLUS, LINDEEN, TOOLE

BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA DRIVER PRIVACY PROTECTION ACT MODELED AFTER THE FEDERAL ACT; PROHIBITING THE DISCLOSURE OF CERTAIN PERSONAL INFORMATION FROM MOTOR VEHICLE OR DRIVER RECORDS MAINTAINED BY THE DEPARTMENT OF JUSTICE; PROVIDING, IN ACCORDANCE WITH THE PRIVACY PROVISIONS OF THE MONTANA CONSTITUTION, MORE RESTRICTIONS ON THE RELEASE OF INFORMATION THAN EXIST IN THE FEDERAL ACT; ESTABLISHING CRITERIA FOR THE RELEASE OF CERTAIN INFORMATION; PROHIBITING THE SALE OR DISCLOSURE OF PERSONAL INFORMATION TO A THIRD PARTY EXCEPT FOR CERTAIN USES; ALLOWING THE DEPARTMENT OF JUSTICE TO ADOPT RULES TO IMPLEMENT THE ACT; INCLUDING MISREPRESENTATION TO OBTAIN PERSONAL INFORMATION FROM MOTOR VEHICLE AND DRIVER RECORDS IN THE OFFENSE OF TAMPERING WITH PUBLIC RECORDS OR INFORMATION; AMENDING SECTIONS 2-6-109, 45-7-208, 61-3-101, AND 61-11-105, MCA; REPEALING SECTION 13-38-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 10] may be cited as the "Montana Driver Privacy Protection Act".

NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 10] is to create a more restrictive state version of the federal prohibition on release and use of certain personal information from state motor vehicle records, found in 18 U.S.C. 2721, to protect an individual's privacy, consistent with the Montana constitution, by prohibiting the disclosure and use of personal information contained in Montana motor vehicle records, except when that use may be authorized by law.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 10], the following definitions apply:

(1) "Disclose" means to engage in any practice or conduct that makes available or known, by means of any communication to another person, organization, or entity, personal information contained in a motor vehicle record.

(2) "Express consent" means an affirmative authorization given in writing by a person to whom personal information pertains that specifically allows the department to release personal information to another person, organization, or entity. Consent may be conveyed electronically if the conveyance includes an electronic signature, as defined in 2-20-103, from the person to whom the personal information pertains.

(3) "Highly restricted personal information" means an individual's photograph or image, social security number, or medical or disability information.

(4) "Motor vehicle record" means any record maintained by the department that pertains to a driver's license, commercial driver's license, driving permit, motor vehicle title, motor vehicle registration, or identification card issued by the department.

(5) "Person" does not mean a state agency or local government entity.

(6) (a) "Personal information" means information that identifies a person, including a person's name, address, telephone number, social security number, driver identification number, photograph or image, and medical or disability information.

(b) The term does not include the five-digit zip code of an address, information on vehicular accidents, driving or equipment-related violations, a person's driver's license or vehicle registration status, or a vehicle's insurance status.

(7) "Record" includes all books, papers, photographs, photostats, cards, film, tapes, recordings, electronic data, printouts, or other documentary materials, regardless of physical form or characteristics.

NEW SECTION. Section 4. Disclosure of personal information from motor vehicle record prohibited. The department may not disclose personal information from a motor vehicle record unless the disclosure is permitted or required, as provided in [section 5, 6, or 7].

NEW SECTION. Section 5. Required disclosure. Upon application, proof of the identity of a person requesting a record, and payment of the fees required in [section 8], the department shall disclose personal information, excluding highly restricted personal information, from a motor vehicle record for use in

1 implementing federal law and federal regulations regarding:

- 2 (1) motor vehicle or driver safety and theft;
- 3 (2) motor vehicle emissions;
- 4 (3) motor vehicle product alterations, recalls, or advisories;
- 5 (4) performance monitoring of motor vehicles and dealers by motor vehicle manufacturers; and
- 6 (5) removal of nonowner records from the original owner records of motor vehicle manufacturers.

7

8 **NEW SECTION. Section 6. Permitted disclosure of personal information -- specific uses.** Upon
9 application, proof of the identity of the person requesting a record, and payment of fees required in
10 [section 8], the department may disclose personal information, including highly restricted personal
11 information, from a motor vehicle record to:

- 12 (1) the person who is the subject of the motor vehicle record; or
- 13 (2) a person who represents that the use of the information will be strictly limited to one or more
14 of the following:

15 (a) a federal, state, or local government agency, including a court or a law enforcement agency,
16 and any individual acting on behalf of the agency in carrying out its functions, INCLUDING REPRESENTATIVES
17 OF THE NEWS MEDIA FOR A LEGITIMATE LAW ENFORCEMENT PURPOSE, AS DETERMINED BY THE DEPARTMENT; or

18 (b) a person, organization, or entity, upon the express consent of the person to whom the
19 information pertains.

20

21 **NEW SECTION. Section 7. Permitted disclosure of personal information, excluding highly**
22 **restricted personal information -- specific uses.** Upon application, proof of the identity of the person
23 requesting a record, and payment of the fees required in [section 8], the department may disclose personal
24 information, excluding highly restricted personal information, from a motor vehicle record to a person who
25 represents that the use of the personal information will be limited to one or more of the following uses:

- 26 (1) in the normal course of business by a legitimate business or its agents, employees, or
27 contractors, but only:

28 (a) to verify the accuracy of personal information submitted by the individual to the business or
29 its agents, employees, or contractors; and

30 (b) if the submitted information is not correct or is no longer correct, to obtain the correct

information for the purposes of preventing fraud by pursuing legal remedies against or recovering on a debt or security interest against the individual;

(2) BY A PARTY IN INTEREST, OR THE AGENT OF A PARTY IN INTEREST, IN A CIVIL, CRIMINAL, ADMINISTRATIVE, OR ARBITRAL PROCEEDING IN ANY COURT OR GOVERNMENT AGENCY OR BEFORE ANY SELF-REGULATORY BODY, INCLUDING THE SERVICE OF PROCESS, AN INVESTIGATION IN ANTICIPATION OF LITIGATION, AND THE EXECUTION OR ENFORCEMENT OF JUDGMENTS AND ORDERS, OR PURSUANT TO AN ORDER OF ANY COURT;

(3) BY AN INSURER OR INSURANCE SUPPORT ORGANIZATION OR A SELF-INSURED ENTITY OR ITS AGENTS, EMPLOYEES, OR CONTRACTORS, IN CONNECTION WITH THE FOLLOWING ARISING UNDER INSURANCE POLICIES:

(A) THE INVESTIGATION OF CLAIMS;

(B) ANTIFRAUD ACTIVITIES;

(C) RATEMAKING; OR

(D) UNDERWRITING;

(4) BY AN EMPLOYER OR ITS AGENT OR INSURER TO OBTAIN OR VERIFY INFORMATION RELATING TO A HOLDER OF A COMMERCIAL DRIVER'S LICENSE REQUIRED UNDER FEDERAL OR STATE LAW;

~~(2)~~(5) to conduct research activities and produce statistical reports AND JOURNALISTIC ARTICLES as long as the personal information is not published, disclosed to a third party, or used to contact individuals;

~~(3)~~(6) to provide notice to the owners of towed, abandoned, or impounded vehicles;

~~(4)~~(7) for use by any licensed private investigative agency or licensed security service for any purpose provided under this section;

~~(5)~~(8) for use in activities pertaining to:

(a) motor vehicle or driver safety and theft;

(b) motor vehicle emissions;

(c) motor vehicle product alterations, recalls, or advisories;

(d) performance monitoring of motor vehicles and dealers by motor vehicle manufacturers; and

(e) removal of nonowner records from the original owner records of motor vehicle manufacturers;

~~(6)~~(9) for any other use that is specifically related to the operation of a motor vehicle or to public safety and that is authorized by state law; and

~~(7)~~(10) for any use by a requester who demonstrates to the department that the requester has obtained the express consent of the person to whom the information pertains.

1 NEW SECTION. **Section 8. Prerequisites to disclosure.** (1) Prior to the disclosure of personal
2 information or highly restricted personal information, as provided in [section 5, 6, or 7], the department
3 shall require the requester to complete and submit an application, in a form prescribed by the department,
4 identifying the requester and specifying the statutorily recognized uses for which the personal information
5 or highly restricted personal information is being sought.

6 (2) The department ~~may~~ SHALL require the requester to provide identification acceptable to the
7 department.

8 (3) (A) The department shall collect the appropriate fees paid by the requester and shall determine
9 the amount of the fees in accordance with 61-3-101, ~~and~~ 61-11-105, AND THIS SUBSECTION (3), or as
10 appropriate, in accordance with the terms of a contract between the department and the requester.

11 (B) THE DEPARTMENT SHALL ENSURE THAT FEES ESTABLISHED BY POLICY OR CONTRACT:

12 (i) RECOVER THE DEPARTMENT'S COST AND EXPENSES AS PROVIDED IN 2-6-110(2) AND 61-3-101; AND

13 (ii) INCLUDE AN ADDITIONAL AMOUNT NECESSARY TO COMPENSATE THE DEPARTMENT FOR COSTS ASSOCIATED
14 WITH DEVELOPING AND MAINTAINING THE DATABASE FROM WHICH INFORMATION IS REQUESTED.

15 (C) EXCEPT AS PROVIDED IN SUBSECTION (3)(D), THE DEPARTMENT SHALL CHARGE A FEE TO ANY PERSON,
16 INCLUDING A REPRESENTATIVE OF A FEDERAL, STATE, OR LOCAL GOVERNMENT ENTITY OR MEMBER OF THE NEWS MEDIA
17 WHO REQUESTS INFORMATION UNDER THIS SECTION.

18 (D) THE DEPARTMENT MAY NOT CHARGE A FEE FOR INFORMATION REQUESTED BY THE GOVERNOR'S OFFICE OF
19 BUDGET AND PROGRAM PLANNING, THE STATE TAX APPEAL BOARD, ANY LEGISLATIVE BRANCH AGENCY OR COMMITTEE,
20 OR ANY CRIMINAL JUSTICE AGENCY, AS DEFINED IN 44-5-103.

21
22 NEW SECTION. **Section 9. Sale or disclosure of personal information by recipient.** (1) A requester
23 who receives personal information or highly restricted personal information pursuant to [section 5, 6, 7,
24 or 8] may not sell or disclose the information, except for a use that is specifically permitted in [section 5,
25 6, or 7].

26 (2) A requester who sells or discloses personal information or highly restricted personal information
27 to a third party under this section shall create and maintain records for a period of not less than 5 years
28 from the date of the sale or disclosure. The records must show the name, address, telephone number,
29 and any other identifying information required by the department of the third party who bought or received
30 the information and must document the permitted use for which the information was obtained. The records

1 must be produced or made available for inspection at the request of the department.

2

3 **NEW SECTION. Section 10. Rulemaking.** The department may adopt rules to implement [sections
4 1 through 9] and this section. The rules may include procedures for:

5 (1) verifying the identity of a person requesting personal information;

6 (2) maintaining records of release of personal information by the department or by any recipient
7 under [sections 1 through 9] and this section; and

8 (3) providing for oversight of sale or disclosure of personal information to third parties.

9

10 **Section 11.** Section 2-6-109, MCA, is amended to read:

11 **"2-6-109. Prohibition on distribution or sale of mailing lists -- exceptions -- penalty.** (1) Except as
12 provided in subsections (3) through (8), in order to protect the privacy of those who deal with state and
13 local government:

14 (a) an agency may not distribute or sell for use as a mailing list any list of persons without first
15 securing the permission of those on the list; and

16 (b) a list of persons prepared by the agency may not be used as a mailing list except by the
17 agency or another agency without first securing the permission of those on the list.

18 (2) As used in this section, "agency" means any board, bureau, commission, department, division,
19 authority, or officer of the state or a local government.

20 (3) [Except as provided in 30-9-403, this] This section does not prevent an individual from
21 compiling a mailing list by examination of original documents or applications that are otherwise open to
22 public inspection.

23 (4) This section does not apply to the lists of registered electors and the new voter lists provided
24 for in 13-2-115 ~~and 13-38-103, or~~ to lists of the names of employees governed by Title 39, chapter 31,
25 ~~or to lists of persons holding driver's licenses provided for under 61-5-126.~~

26 (5) This section does not prevent an agency from providing a list to persons providing prelicensing
27 or continuing educational courses subject to state law or subject to Title 33, chapter 17.

28 (6) This section does not apply to the right of access ~~either by Montana law enforcement agencies~~
29 ~~or, by purchase or otherwise, of public records dealing with motor vehicle registration.~~

30 (7) This section does not apply to a corporate information list developed by the secretary of state

1 containing the name, address, registered agent, officers, and directors of business, nonprofit, religious,
2 professional, and close corporations authorized to do business in this state.

3 (8) This section does not apply to the use by the public employees' retirement board of a mailing
4 list of board-administered retirement system participants to send materials on behalf of a retiree
5 organization formed for board-administered retirement system participants and with tax-exempt status
6 under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the
7 board, provided that the mailing list is not released to the organization.

8 (9) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor. (Bracketed
9 language deleted July 1, 2001.)"

10
11 **Section 12.** Section 45-7-208, MCA, is amended to read:

12 **"45-7-208. Tampering with public records or information.** (1) A person commits the offense of
13 tampering with public records or information if ~~he~~ the person:

14 (a) knowingly makes a false entry in or false alteration of any record, document, legislative bill or
15 enactment, or thing belonging to or received, issued, or kept by the government for information or record
16 or required by law to be kept by others for information of the government;

17 (b) makes, presents, or uses any record, document, or thing knowing it to be false and with
18 purpose that it be taken as a genuine part of information or records referred to in subsection (1)(a); ~~or~~

19 (c) purposely destroys, conceals, removes, or otherwise impairs the verity or availability of ~~any~~
20 ~~such a~~ a record, document, or thing; ~~or~~

21 (d) purposely or knowingly misrepresents the person's identity or the use for which personal
22 information is sought in order to obtain personal information from a motor vehicle record under [section
23 5, 6, or 7].

24 (2) A person convicted of the offense of tampering with public records or information shall be
25 imprisoned in the state prison for ~~any a~~ a term not to exceed 10 years or be fined an amount not to exceed
26 \$50,000, or both."

27
28 **Section 13.** Section 61-3-101, MCA, is amended to read:

29 **"61-3-101. Duties of department -- records.** (1) The department shall keep a record as specified
30 in this section of all motor vehicles, trailers, and semitrailers of every kind, of certificates of registration

1 and ownership of those vehicles, and of all manufacturers and dealers in motor vehicles.

2 (2) The record must show the following:

3 (a) the name of the owner, the residence address by street or rural route, the town, and the
4 county and the mailing address if different from the residence address;

5 (b) the name and address of the conditional sales vendor, mortgagee, or other lienholder and the
6 amount due under the contract or lien;

7 (c) the manufacturer of the vehicle;

8 (d) the manufacturer's designation of the style of the vehicle;

9 (e) the identifying number;

10 (f) the year of manufacture;

11 (g) the character of the motive power and the shipping weight of the vehicle as shown by the
12 manufacturer;

13 (h) the distinctive license number assigned to the vehicle, if any;

14 (i) if a truck or trailer, the number of tons capacity or GVW if imprinted on the manufacturer's
15 identification plate;

16 (j) except as provided in 61-3-103, the name and complete address of any holder of a perfected
17 security interest in the vehicle; and

18 (k) other information that may from time to time be found desirable.

19 (3) The department shall file applications for registration received by it from county treasurers and
20 register the vehicles and the vehicle owners as follows:

21 (a) under the distinctive license number assigned to the vehicle by the county treasurer;

22 (b) alphabetically under the name of the owner;

23 (c) numerically under make and identifying number of the vehicle; and

24 (d) under another index of registration as the department considers expedient.

25 (4) The department shall determine the amount of fees, including local option taxes or fees, to be
26 collected at the time of registration for each light vehicle subject to a registration fee under 61-3-560
27 through 61-3-562 and for each bus, truck having a manufacturer's rated capacity of more than 1 ton, and
28 truck tractor subject to a fee in lieu of tax under 61-3-528 and 61-3-529. The county treasurer shall
29 collect the registration fee, other appropriate fees, and local option taxes or fees, if applicable, on each
30 motor vehicle at the time of its registration.

(5) Vehicle registration records and indexes and driver's license records and indexes may be maintained by electronic recording and storage media.

(6) In the case of dealers, the records must show the information contained in the application for a dealer's, wholesaler's, or auto auction license, as required by chapter 4, parts 1 and 2, of this title, as well as the distinctive license number assigned to the dealer.

(7) In order to prevent an accumulation of unneeded records and files, regardless of any other statutory requirements, the department may destroy all records and files that relate to vehicles that have not been registered within the preceding 4 years and that do not have an active lien.

(8) ~~All~~ Subject to the provisions of [sections 1 through 10], department records must be open to inspection during reasonable business hours, and the department shall furnish any information from the records, except personal information and highly restricted personal information, as defined in [section 3], upon payment by the applicant of the cost of the information requested. Prior to providing the information, the department ~~may~~ SHALL require the applicant to provide identification. ~~However, the department may, by rule, reasonably restrict disclosure of information on an owner if the owner has requested in writing that the department not disclose the information or if the demands of individual privacy clearly exceed the merits of public disclosure~~ The department may not disclose personal information or highly restricted personal information except as permitted or required under [section 5, 6, or 7]."

Section 14. Section 61-11-105, MCA, is amended to read:

"61-11-105. Release of information -- fees. (1) ~~Except as provided in~~ Subject to the provisions of subsection (2), the department shall, upon request, furnish a person the individual Montana driving record of a licensee, showing the following:

- (a) driver's license status and expiration date;
- (b) convictions of the licensee; and
- (c) traffic accidents in which the licensee was involved.

(2) ~~Unless the merits of public disclosure exceed the demands of individual privacy, a driving record of a licensee released under subsection (1) may not disclose an individual's address, social security number, photograph, medical or disability information, or information provided through means of a tracking device~~ The department may not disclose personal information or highly restricted personal information from an individual Montana driving record, except as permitted or required under [section 5, 6, or 7].

(3) Information relating to a traffic accident that did not involve a conviction, as defined in 61-11-203, may not be released by the department unless the release is requested or approved by a party involved in the accident or is required by court order or a duly executed subpoena.

(4) A fee of \$4 must be paid for each individual Montana driving record requested. A fee of \$10 must be paid if a certified Montana record, as provided in 61-11-102(6), is requested. All driving records must be provided without charge to any criminal justice agency, as defined in 44-5-103, or other state or federal agency."

NEW SECTION. **Section 15. Repealer.** Section 13-38-103, MCA, is repealed.

NEW SECTION. **Section 16. Codification instruction.** [Sections 1 through 10] are intended to be codified as an integral part of Title 61, chapter 11, and the provisions of Title 61, chapter 11, apply to [sections 1 through 10].

NEW SECTION. **Section 17. Effective date.** [This act] is effective on passage and approval.

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